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By:

Leonor S. Tuck
Leonor S. Tuck

Date: April 4, 2002

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor: Jeffrey R. Sampson, et al.

Group Unit:

Serial No.: 09/938,937

Examiner:

Title: "Use of Unstructured Nucleic in Assaying Nucleic Acid Molecules"

Filed on: August 24, 2001

Attorney Docket No.: 10003516-1

Assistant Commissioner for Patents
Washington, D. C. 20231

PETITION

Dear Sir:

This is a Petition in Response to the Notice of Incomplete Reply mailed March 14, 2002. In that notice, the period for response was not re-set. Applicants hereby petition from the requirement to comply with the previous due date. The fee for this petition may be charged to Account No. 50-1078.

Adjustment date: 07/25/2003 CKHLOK
04/10/2002 NMCHAMN1 00000005 501078 09938937
01 FC:115 110.00 CR

07/25/2003 CKHLOK 00000022 501078 09938937
01 FC:1255 1960.00 DA
02 FC:1460 130.00 DA

The facts are as follows:

Applicants filed the above-captioned patent application on August 24, 2001 without a signed declaration. Applicants received a Notice to File Missing Parts dated September 10, 2001. Applicants filed a timely response on November 13, 2001 to the Notice which Applicants thought and intended to be a full response, that is, the response was *bona fide* and there was no intention to delay proceedings in this case. On March 20, more than 4 months after submitting the response, Applicants received the Notice of Incomplete Reply dated March 14, 2002. Upon investigation, Applicant discovered that the Notice to File Missing Parts (dated September 10, 2001) indicated that, in addition to the signed declaration, substitute drawings and a sequence listing were also required, which Applicants had not noted before.

It is our understanding of Patent Office practice that when a *bona fide* response is made to the Patent office but the response is inadequate, that a 30 day period for response is allowed to correct the earlier submitted but inadequate response.

Applicants submit this petition to request a 30 day period for response be set for the Notice of Incomplete Reply dated March 14, 2002. Because the Applicants Response (filed November 13, 2001) had already been submitted for more than 4 months prior to Applicants receiving notice from the Patent Office (mailed on March 14, 2002) of the inadequacy of the Response, it would be manifestly unfair to require that the Applicant petition for an extension of time to reply to the Notice of Incomplete Reply. This is the reason for the present Petition

for Relief requesting that the period for Response be re-set to 30 days from the mailing of the Notice of Incomplete Response.

If this petition is not heard prior to the fee for the extension of time for the submission of the sequence listing being charged to Applicant's Deposit Account, the Applicants further request that the charge be rescinded and refunded to the Applicant's Deposit Account.

Accompanying this petition is a copy of the Response filed on the same day as the filing of this Petition. Said Response is believed to complete the Requirements set forth in the Notice to File Missing Parts mailed on September 10, 2001.

ALTERNATIVE REQUEST FOR RELIEF


If the above-petitioned for relief is not granted, Applicants request *in the alternative* that the time for response be tolled (stopped) for the period of time from when Applicants mailed their initial response (November 13th, 2001) until the mailing of the Notice of Incomplete Reply (March 14th, 2001), a period of 121 days. The effect of this requested relief would be to shorten the period of time for which Applicants would have to buy an extension of time due to the extended period (121 days) that the Response was held at the Patent Office. Subtracting the 121 days from the date of the filing of the Sequence Listing and drawings on April 4, 2002, would mean that Applicants would need to file a one month extension to comply with the response date set forth in the Notice to File Missing Parts mailed September 10, 2001. Applicant's have requested this one month

extension in the Response filed on the same day as the filing of this
Petition (copy enclosed).

Any questions regarding this Petition may be directed to the
below signed Attorney.

Respectfully submitted,

JEFFREY R. SAMPSON, ET AL.

By: 

Michael J. Beck
Reg. No.: 40,907

IP Administration
Agilent Technologies, Inc.
Legal Department, M/S 51UPD
P. O. Box 7599
Loveland, CO 80537-0599

Date: April 4, 2002
Phone No. : (650) 485-3864